IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 22..3..2007

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The Hon'ble Mr. Justice K.CHANDRU

W.P. Nos.9720 and 12089 of 2001

The Kinathukadavu Primary Agricultural
Co-operative bank Ltd. K-97
by its Special Officer
Kinathukadavu
Coimbatore .. Petitioner in both W.Ps.

vs.

1. The State of Tamil Nadu
Rep. by Secretary to Government
Labour and Employment Department
Fort St. George
Chennai - 9

2. The Commissioner of Labour
D.M.S. Compound
Teynampet
Chennai - 18

3. The Deputy Commissioner of Labour
Coimbatore .. Respondents in both W.Ps.

Petitions filed under Article 226 of the Constitution of India seeking for issue of writ of Certiorari calling for the records of the third respondent with reference to Minimum Wages Act case Nos.334 of 2000 and 338 of 2000 respectively and quash the order dated 28.3.2001 as they are illegal, ultra vires and constitutional opposed to the G.O.Ms.No.207 Labour and Employment Department J2 dated 12.12.2000.

For Petitioner : Mr.S.D.N.Vimalanathan both WPs

For Respondents : Mr.V.R.Thangavelu, GA both WPs

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C O M M O N O R D E R

In both the writ petitions, the Primary Agricultural Co-operative Bank is the petitioner. In W.P.No.9720 of 2000, the order dated 28.3.2001 passed by the third respondent Deputy Commissioner of Labour, viz., Minimum Wages Authority, in Minimum Wages Application No.334 of 2000 is under challenge and in W.P.No.12089 of 2001, the order dated 28.3.2001 passed by the third respondent, Deputy Commissioner of Labour, Coimbatore, viz., Minimum Wages Authority, in Minimum Wages Application No.338 of 2000 is under challenge.

2. While in the first writ petition, one Krishnaveni, who was the beneficiary and who was awarded the arrears of payment arising out of non-payment of minimum wage of Rs.1997/-, was under challenge, in the second writ petition, one Raja Arunachalam whose arrears of payment was computed as Rs.2983/-, was under challenge. In both the cases, the third respondent has ordered compensation of 10 times for non-payment of minimum wages. It is surprising, in both the writ petitions, the beneficiaries and the Assistant Inspector of Labour, who lodged the complaint were not made parties and, therefore, the writ petitions are liable to be dismissed for non-joinder of parties. In any event, as the contention raised in both the writ petitions is likely to come up in future, this Court is not inclined to reject the writ petitions only on the ground of non-joinder of parties.

3. According to the petitioner Society, they are governed by the provisions of the Tamil Nadu Co-operative Societies Act, 1983 and the terms and conditions of the employees are fixed only in terms of the said Act and, therefore, the Minimum Wages Act, 1948 [for short, 'Ac'] will not apply to them. Once the Act does not apply, they need not pay the minimum wages for the employees employed in the fair price shop. However, the third respondent being the authority empowered under the Act, took suo motu proceedings initiated by the Assistant Inspector of Labour and held that the workers employed in the fair price shops were not paid in terms of G.O.(D) No.10, Labour and Employment Department, dated 04.01.1995 and, therefore, computed the amount for July 2000 and ordered compensation of 10 times. Under the said G.O., the employees are entitled to get minimum wages as it relates to employment in the various shops and it also fixed minimum wages for sales persons and packers. The writ petitioner did not file any reply for the proceedings initiated by the third respondent and accepting the complaint made by the Assistant Inspector of Labour, the minimum wages were computed.

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4. I have heard Mr.S.D.N.Vimalanathan, learned counsel appearing for the petitioner and Mr.V.R.Thangavelu, learned Government Advocate representing the respondent and have perused the records.

5. The learned counsel appearing for the petitioner relied on the G.O. relating to G.O.Ms.No.207, Labour and Employment Department dated 21.12.2000 wherein the first respondent Government had granted exemption from the provisions of the Act for the employment in the Co-operative fair price shops under the public distribution system in terms of Section 12 of the Act. It was also stated that in the Appendix to the notification, under Section 26(1) of the Act, the Governor of Tamil Nadu has directed that the provisions of the said Act will not apply to the classes of employees employed in the co-operative fair price shops under the public distribution system in the State of Tamil Nadu.

6. First of all, whether such an exemption can be granted at all has to be determined. Even otherwise, the Supreme Court vide its decision reported in 1998 (1) SCC 318 [State of Tamil Nadu, represented by Secretary, Housing Department, Madras v. K.Sabanayagam and another] held that before granting any exemption, the affected parties, viz., the workmen, will have to be heard and the relevant passages found in paragraphs 22 and 23 are extracted below:

Para 22."But there may be a third category of cases wherein the exercise of conditional legislation would depend upon satisfaction of the delegate on objective facts placed by one class of persons seeking benefit of such an exercise with a view to deprive the rival class of persons who otherwise might have already got statutory benefits under the Act and who are likely to lose the existing benefit because of exercise of such a power by the delegate. In such type of cases the satisfaction of the delegate has necessarily to be based on objective consideration of the relevant data for and against the exercise of such power. Maybe such an exercise may not amount to any judicial or quasi-judicial function, still it has to be treated to be one which requires objective consideration of relevant factual data pressed into service by one side and which could be tried to be rebutted by the other side who would be adversely affected if such exercise of power is undertaken by the delegate. In such a third category of cases of conditional legislation the legislature fixes up objective conditions for the exercise of power by the

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delegate to be applied to past or existing facts and for deciding whether the rights or liabilities created by the Act are to be denied or extended to particular areas, persons or groups. This exercise is not left to his subjective satisfaction nor is it a mere ministerial exercise. ..."

Para 23:"... Therefore, in the aforesaid third category of cases even though the delegate is said to be exercising conditional legislative power it cannot be said to be entrusted by the legislature with the function of a purely subjective nature based on its sole discretion, nor can it be said to be exercising such power for binding uniformly the whole class of persons without benefiting one class at the cost of the other class of persons who are subjected to the exercise of such exemption power. It must, therefore, be held that in such third category of cases of exercise of power of conditional legislation objective assessment of relevant data furnished by rival classes of persons likely to be affected by such an exercise cannot be said to be ruled out or a taboo to such an exercise of power. It is also necessary to keep in view that in such category of cases the delegate exercising power of conditional legislation does not lay down a uniform course of conduct to be followed by the entire class of persons covered by the sweep of such an exercise but lays down a favourable course of conduct for a smaller class of persons at the cost of rival large category of persons covered by the very same exercise of power. To that extent there is a mini lis between these two rival categories of persons likely to be affected by such an exercise by the delegate. Such exercise may also cover existing situations as well as future situations sought to be subjected to the exemption for the period prescribed in the order and may sometimes affect to any permissible extent even past transactions in individual cases. Such type of exercise of power cannot be said to rule out consideration of rival viewpoint on the question of grant of exemption to an establishment or to a class of establishments from the relevant provisions of the Act. In the case before us the legislation has prescribed objective standards and has permitted the delegate to grant exemption and to withdraw the benefit of the statute which is being enjoyed by the persons and in our opinion, in such a

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situation, principles of fair play or consultation or natural justice cannot be totally excluded."

A perusal of the impugned order does not show that such a hearing was given by the first respondent to the workman. On that score, the order is liable to be set aside.

7. In any event, the fixation of minimum wages is held to be a rock bottom of the wage scale of the workmen and an employer, who does not pay the minimum wage, has no right to run the establishment [See AIR 1970 S.C. 2042 [Chandra Bhavan Boarding and Lodging, Bangalore vs. State of Mysore and others].

8. In fact, the Supreme Court in interpreting Article 23 of the Constitution of India held that non-payment of minimum wage will amount to forced labour, which amounts to violation of Article 23 of the Constitution of India. In the judgment reported in 1983 (1) SCC 525 [Sanjit Roy v. State of Rajasthan], the Supreme Court had an occasion to consider the payment made to famine relief works employees in the State of Rajasthan where the State of Rajasthan contended that the very employment itself was done on gratuitous basis. Therefore, the application of the Act was exempted by the State enactment. The Supreme Court repelling the contentions of the State held that there can never be exemption in terms of the minimum wages payable to the worker. Whatever may be the object of the State while granting employment as famine relief, the Supreme Court held that the legislation in question was illegal and contrary to Article 23 of the Constitution of India. The relevant passages found in paragraphs 3 and 4 of the judgment are extracted below:

Para 3: "I must, therefore, hold consistently with this decision that where a person provides labour or service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the meaning of the words "forced labour" and attracts the condemnation of Article 23. Every person who provides labour or service to another is entitled at the least to the minimum wage and if anything less than the minimum wage is paid to him, he can complain of violation of his fundamental right under Article 23 and ask the court to direct payment of the minimum wage to him so that the breach of Article 23 may be abated."

Para 4: "The State cannot be permitted to take advantage of the helpless condition of the affected persons and extract labour or service from them on payment of less than the minimum wage. No work of

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> utility and value can be allowed to be constructed on the blood and sweat of persons who are reduced to a state of helplessness on account of drought and scarcity conditions. The State cannot under the guise of helping these affected persons extract work of utility and value from them without paying them the minimum wage. Whenever any labour or service is taken by the State from any person, whether he be affected by drought and scarcity conditions or not, the State must pay, at the least, minimum wage to such person on pain of violation of Article 23 and the Exemption Act insofar as it excludes the applicability of the Minimum Wages Act, 1948 to workmen employed on famine relief work and permits payment of less than the minimum wage to such workmen, must be held to be invalid as offending the provisions of Article 23."

9. In the light of the said authoritative pronouncement, the order of the Government in G.O.Ms.No.207 Labour and Employment Department dated 21.12.2000 itself is illegal and can never be permitted to prevent the workmen from claiming what has been fixed as minimum wage by the very same Government. The benefit given by one wing of the Government cannot be taken away by the other wing in a disguised manner.

10. Once the G.O. in question is removed, the only other question is whether the order of the third respondent authority is valid or not. In the present case, the writ petitioner has not filed any counter before the third respondent and resisted the said claim. Further, it is only an arithmatic calculation to be made as per the G.O., viz., G.O. (D) No.10 Labour and Employment Department dated 04.01.1995 and it does not require any great exercise to arrive at the figure.

11. Further, when the inspection by the Assistant Inspector of labour was made on 25.7.2000, on that day the exemption G.O. was not in operation. Even a perusal of the exemption G.O., which has now been held to be unconstitutional by this Court, clearly shows that it has not been made retrospective in operation. Even on that score, the writ petition is liable to be dismissed.

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12. Therefore, there are no merits in the writ petitions. Accordingly, both the writ petitions shall stand dismissed. However, there will be no order as to costs.
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Sd/

Asst.Registrar

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Sub Asst.Registrar

To

1. The Secretary to Government
   State of Tamil Nadu
   Labour and Employment Department
   Fort St. George
   Chennai - 9

2. The Commissioner of Labour
   D.M.S. Compound
   Teynampet
   Chennai - 18

3. The Deputy Commissioner of Labour
   Coimbatore

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